

Reserved

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 110 (SB) of 2004

Dr. Om Prakash Upadhayay
S/o late S.N. Upadhayay,
serving as Chief Medical superintendent,
Dr. Sushila Tiwari Memorial Forest Hospital,
Rampur Road, Haldwani
District Nainital Petitioner

Versus

1. Uttaranchal Forest Hospital Trust,
Rampur Road, Haldwani,
District Nainital through its Secretary
 2. Chairman, Uttaranchal Forest Hospital
Trust/Chief Secretary,
Government of Uttaranchal, Dehradun,
 3. Chairperson, Management Committee,
Uttaranchal Forest Hospital Trust/
Principal Secretary, Forest Department,
Government of Uttaranchal, Dehradun,
 4. Sri Vijay Kumjar, I.F.S.,
Uttaranchal Forest Hospital Trust,
Rampur Road, Haldwani(Nainital),
 5. Dr. Vijay Shankar Singh, Head,
Department of Bio-Chemistry,
Uttaranchal Forest Hospital Trust
Medical College, Rampur Road,
Haldwani (Nainital). Respondents
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Mr. Manoj Tiwari, learned counsel for the petitioner.
Mr. Rajendra Dobhal, learned counsel for the respondents.

**Coram: Hon. P.C. Verma, J.
Hon. Rajesh Tandon, J.**

Dated: September 1st, 2004

[Per Hon. P.C.Verma, J.]

1. By means of this writ petition, the petitioner has challenged the order dated 21.04.2004 passed by the respondent no.4 whereby the Committee of the Trust running the Hospital, had decided to revert the petitioner from the

post of Chief Medical Superintendent holding on deputation to his original post in his parent organization i.e. Banaras Hindu University, Varanasi. By the same communication, Vice Chancellor of the University had been requested to issue an order for joining of the petitioner so as to enable him to join in Banaras Hindu University by 22.5.2004. The petitioner has also challenged the decision of the respondent no.3 rejecting his appeal dated 24.04.2004, which was communicated to him vide letter dated 14.5.2004. It is also prayed that a writ of mandamus be issued commanding the respondents to permit him to function as Chief Medical Superintendent in Dr. S.T.M.F.Hospital, Haldwani.

2. Brief facts giving rise to the present petition are that applications were invited from the eligible candidates for appointment to the post of Chief Medical Superintendent in the Sushila Tiwari Memorial Forest Hospital Trust, Haldwani, vide Advertisement No. 05/2003/M.C. dated 20.05.2003 published in all leading news papers including the Hindustan Times dated 23.05.2003. The petitioner, who was serving as the Chief Medical Officer in Banaras Hindu University also applied for the same. After short-listing of the applications, petitioner was called for personal interview on 11.07.2003 at Haldwani. Petitioner appeared before the Selection and on the basis of the recommendation of the selection Committee, an order of appointment was issued in favour of the petitioner on 12.07.2003. According to the petitioner, for the post of Director/Medical Superintendent of the affiliated Teaching Hospital, the incumbent should possess a recognized post-graduate medical qualification from the recognized institution with ten years administrating experience. He submitted that he discharged his duties with utmost devotion to ensure that it earns a reputation as the best Hospital in the region and

within a short period of about nine months, the Hospital has earned a reputation in all fields. During the aforesaid period, no show cause notice or warning was ever issued to him. The entire medical paramedical and other staff of the Hospital were motivated to work with team spirit during the tenure of the petitioner. However, Sri Vijay Kumar (respondent no.4) was nursing grudge against the petitioner. Respondent no.5, Dr. Vijay Shankar Singh is very close to Mr. Vijay Kumar and by virtue of his proximity with the respondent no.4, he wields a great degree of clout in the Hospital and he also enjoys extra legal authority in the day to day affairs of the Hospital. Respondent no. 4 with connivance with respondent no.5 left no stone unturned in harassing and victimizing the petitioner. On 12.4.2004, petitioner submitted one representation to the Principals Secretary, Forest Department during her visit to Haldwani whereby he sought redressal of his grievance and also informed about the administrative impropriety and financial irregularities committed in the Trust. But, vide order dated 22.04.2004, parent organization of the petitioner was informed that the petitioner shall be relieved from his post to enable him to join in his parent department. He submitted that the minimum tenure of appointment was of three years, therefore, he shifted his family to Haldwani. His daughter is studying in class X. The academic session has already started in the month of April, 2004. Therefore, it is not possible to shift her in some other institution at this stage. At the time of passing of the impugned order, no notice or any opportunity of hearing whatsoever was given to the petitioner. As such, the principles of natural justice have been violated. The petitioner never indulged in private practice and no reason whatsoever has been assigned for premature repatriation. The petitioner preferred appeals against the order dated

21.04.2004. The Secretary of the Trust vide letter dated 14.05.2004 informed the petitioner that his appeal dated 24.04.2004 submitted by the Chairperson of the Management Committee has been rejected, however, the reasons for rejecting the appeal have not been indicated in the said letter. The petitioner is unaware about fate of second appeal dated 6.5.2004 submitted by him to the Chairman of the Trust. Therefore, the petitioner had no option but to file the present petition.

3. Learned counsel for the respondent submitted that the petitioner was appointed as Chief Medical Superintendent on deputation. The infrastructure requirement, faculty position and their qualifications should be as per the guidelines/regulations approved by the Medical Council of India(MCI). The MCI in the teaching hospital of the Medical College has prescribed the post of "Medical Superintendent". The Medical Council for India at the time of inspection in August and September, 2003 suggested to the Trust that the post(s) and their minimum qualification should be such as per MCI regulations. Dr. Sushila Tiwari Memorial Hospital is now the teaching Hospital of the Medical College, hence as per the MCI Regulation, there should be post of Medical superintendent (not Chief Medical Superintendent). Therefore, the Board of Trust at their 25th meeting held on 20.11.2003 resolved that the post of Chief Medical Superintendent be converted to "Medical Superintendent" and educational qualification for the post will be as per MCI norms and the pay scale will be equivalent to Professor. The pay scale of professor (Rs. 14300-425-18400) is lower than the post of Chief Medical Superintendent. As such after passing of the resolution dated 20.11.2003, the post of Chief Medical Superintendent does not exist. Since the pay scale of

Medical Superintendent is lower than the erstwhile post of Chief Medical Superintendent, therefore, in order to meet the requirement of MCI, another professor was designate as Medical Superintendent and there was no need to continue the petitioner on deputation. In the above circumstances, the impugned order was passed. Therefore, the petition is liable to be dismissed.

4. Learned counsel for the petitioner also filed rejoinder affidavit and denied the averment made in the counter affidavit and asserted that decision of the Management Committee for the petitioner's repatriation is without jurisdiction and is nullity in the eye of law. It is also averred that the deputationist does not lose protection of constitutional provisions and the borrowing organization is not free to victimize a deputationist according to its whims and fancies.

5. Learned counsel argued that the petitioner cannot be repatriated from Mrs. Sushila Tewari memorial Medical College, Haldwani to his original post in his parent organization i.e. Banaras Hindu University, Varanasi because he was holding a tenure post, which is clear from clause 2.2 of his appointment letter. He was required to serve in the institution for a minimum tenure of three years. As such, he cannot be reverted back to his parent department.

6. As against this, Mr. R. Dobhal, learned counsel for the respondents argued that a deputationist has no right to continue on deputation or to claim permanent absorption in borrowing department unless his permanent absorption is covered by a statutory provisions. In support of his contention he has relied upon the reported decision – Kunal

Nanda Vs. Union of India and another reported in (2000) 5 Supreme Court Cases 362.

7. In support of his contention, Mr. Manoj Tiwari, learned counsel for the petitioner has placed reliance on reported decision – Parshotam Lal Dhingra Vs. Union of India, AIR 1958 SC 36, wherein the Apex Court has held that an appointment to a temporary post for a certain specified period also gives the servant so appointed, a right to hold the post for the entire period of his tenure and his tenure cannot be put to an end during that period unless he is, by way of punishment, dismissed or removed from service. In para 12 of the judgment the Apex Court has held as under:

“ The position may, therefore, be summarized as follows: In absence of any special contract the substantive appointment to a permanent post gives the servant so appointed a right to hold the post until, under the rules, he attains the age of superannuation or is compulsorily retired after, having put in the prescribed number of years’ service or the post is abolished and his service cannot be terminated except by way of punishment for misconduct, negligence, inefficiency or any other disqualification found against him or proper enquiry after due notice to him. An appointment to a temporary post for a certain specified period also gives the servant so appointed a right to hold the post for the entire period of his tenure and his tenure cannot be put an end to during that period unless, he is by way of punishment, dismissed or removed from the service. Except in these two cases the appointment to a post, permanent or temporary, on probation or on an officiating basis or a substantive appointment to a temporary post gives to the servant so appointed no right to the post and his service may be terminated unless his service had ripened into what is, in the service rules, called a quasi permanent the protection of Article 311 are available to such of these several categories of Government servants.”

8. In the case K.H.Phadnis Vs. State of Maharashtra, reported in 1971 (1) Supreme Court Cases 790, the Apex Court held that if there is evidence that the order of reversion is not “ a pure accident of service” but an order in the nature of punishment, Article 311 will be attracted. Learned counsel also placed reliance in a reported decision – State of Madhya Pradesh and others Vs. Ashok Dehshmukh and another reported in (1988) 3 SCC 503, wherein the Apex Court has observed that “in the case before us **no specific period** had been mentioned as the period during which respondent no. 1 was to be on deputation either in the order of sending him on deputation or in any relevant rule or Government order” and held that unless the Court is sure that the impugned order is really based upon such allegations it should not proceed to quash administrative orders which are made in the exigencies of the administration.

9. In the present case, the petitioner was given appointment for a period of three years, which is clear from clause 2.2 of the appointment letter no. 1913/6-4/Ra.Ja.Pa./12 Haldwani : dated 12.07.2003 issued to the petitioner from the office of the Secretary, Uttarakhand Forest Hospital Trust, Haldwani (Nainital). Thus, he is entitled to serve the institution for a minimum period of three years. From the aforementioned decisions, it is clear that an appointment to a temporary post for a certain specified period also gives the servant so appointed a right to hold the post for the entire period of his tenure and his tenure cannot be put an end during that period unless, he is by way of punishment, dismissed or removed from the service. Therefore, as the appointment of the petitioner was for a fixed tenure, he is entitled to continue as Chief Medical Superintendent / Medical Superintendent till his

term/tenure comes to an end. The case law cited by the learned counsel for the respondents (2000) 5 S.C.C. 362) is not applicable to the facts of this case as in that case the deputationist had already completed the initial period of contract on deputation.

10. In view of the above, the writ petition is allowed and the impugned order dated 21.04.2004 issued by the respondent no.4 is hereby quashed. The respondents are also directed to permit the petitioner to function as Chief Medical Superintendent/Medical Superintendent in Dr. Sushila Tiwari Memorial Forest Hospital, Haldwani for the complete tenure of three years as indicated in his appointment letter. He will also be entitled to official accommodation as per rules.

11. In the circumstances of the case, there will be no order as to costs.

(P.C. Verma, J.)

(Rajesh Tandon, J.)

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